

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 PRESTON WOOD & ASSOCIATES, LLC,)
5 Plaintiff,) NO. H-16-CV-1427
6 v.) August 28, 2018
7 CAMERON ARCHITECTS, INC.,)
8 STEPHEN CAMERON, UL, INC., d/b/a)
9 URBAN LIVING, and VINOD RAMANI)
10 Defendants.)

11 TRIAL
12 BEFORE THE HONORABLE DAVID HITTNER
13 AND A JURY

14 VOLUME 5
15 PAGES 5-1 to 5-87

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1 THE COURT: Please be seated.

2 Well, everything you see in front of you this
3 morning was put together yesterday afternoon. This is not
4 in the form books. I can tell you that.

11:44 5 Okay. So, what we'll be doing is I am going
6 to read this and you follow along. Then the Plaintiff
7 opens -- I have Plaintiff opens, reserves some time. Then
8 we'll take a short break and then pick up with the defense
9 and then the Plaintiff will wrap up.

11:44 10 One thing before I get going.

11 It looks pretty formidable when you take a
12 look at it, but some of the pages are not complete and it's
13 all double-spaced.

14 As you know, during the trial I have said many
11:45 15 times, "Slow down," "Slow down." Occasionally, I will pick
16 up the speed a little bit when we read the charge because
17 you have got a copy and the court reporter has got a copy.

18 But I need to read it to you. I know we have
19 the stipulations in here. I'm not going to read it all
11:45 20 because they have been summarized to you, but we'll look at
21 them and we'll discuss it briefly. So, it's all in here for
22 you. And then we'll talk about the very last page, which is
23 the verdict form.

24 The original that the presiding juror will
11:46 25 sign has the blue back on it. So, you will get that and

Jury Charge

1 take it in with you. But you may mark that up, make any
2 kind of notes or highlighting that you want as you go along,
3 and after the case is over, certainly, you may take that
4 home with you.

11:46 5 All right. With that as a background --
6 People say, 'How do you eat an elephant?' One bite at a
7 time. So, I have learned doing this you can't complete it
8 unless you start it. And, hopefully, you will find it
9 interesting. And then it's up to the attorneys if they have
11:46 10 anything they want to bring to your attention. That's what
11 summation is, look back at the evidence in the case and then
12 what they may want to direct you to.

13 I understand there's one page blank here.
14 What is it? Page 27.

11:47 15 MR. BONHAM: Yes, sir.

16 THE COURT: Page 27 is blank. Don't worry about
17 that. We just had to get it in sequence. And then that was
18 committed, whatever was there, but it still had numbers.
19 So, it's purposely left blank, 27.

11:47 20 With that, we're going to begin.

21 You have heard the evidence in the case. I
22 will now instruct you on the law that you must apply. It's
23 your duty to follow the law as I give it to you. On the
24 other hand, you, the jury, are the judges of the facts. Do
11:47 25 not consider any statement that I have made in the course of

Jury Charge

1 the trial or make in these instruction as an indication that
2 I have any opinion about the facts of this case.

3 After I instruct you on the law, the attorneys
4 will have the opportunity to make their closing arguments.

11:47 5 Statements and arguments of the attorneys are not evidence
6 and are not instructions on the law. They are intended only
7 to assist the jury in understanding the evidence and the
8 parties' contentions.

9 Answer each question from the facts as you
11:48 10 find them. Do not decide who you think should win and then
11 answer the questions accordingly. Your answers and your
12 verdict must be unanimous. In federal court, civil and
13 criminal verdicts are unanimous.

14 You must answer all the questions from a
11:48 15 preponderance of the evidence. By this is meant the greater
16 weight and degree of the credible evidence before you. In
17 other words, a "preponderance of the evidence" just means
18 the amount of evidence that persuades you that a claim is
19 more likely so than not so. In determining whether any fact
11:48 20 has been proved by a preponderance of the evidence in the
21 case, you may, unless otherwise instructed, consider the
22 testimony of all the witnesses, regardless of who may have
23 called them, and all exhibits received in evidence,
24 regardless of who may have produced them. This includes the
11:48 25 Agreed and Stipulated Facts that's attached to this jury set

Jury Charge

1 of instructions.

2 In determining the weight to be given to the
3 testimony of a witness, you should ask yourself whether
4 there was evidence tending to prove that the witness
11:49 5 testified falsely concerning some important fact or whether
6 there was evidence that at some other time the witness said
7 or did something or failed to say or do something that was
8 different from the testimony the witness gave before you
9 during the trial.

11:49 10 You should keep in mind, of course, that a
11 simple mistake by a witness does not necessarily mean that
12 the witness was not telling the truth as he or she remembers
13 it, because people may forget some things or remember other
14 things inaccurately. So, if a witness has made a
11:49 15 misstatement, you need to consider whether that misstatement
16 was an intentional falsehood or simply an innocent lapse of
17 memory; and the significance of that may depend upon whether
18 it has to do with an important fact or with only an
19 unimportant detail.

11:50 20 While you should consider only the evidence in
21 the case, you are permitted to draw such reasonable
22 inferences from the testimony and exhibits as you feel are
23 justified in the light of common experience. In other
24 words, you may make deductions and reach conclusions that
11:50 25 reason and common sense leads you to draw from the facts

Jury Charge

1 that have been established by the testimony and the evidence
2 in the case.

3 The testimony of a single witness may be
4 sufficient to prove any fact, even if a greater number of
11:50 5 witnesses may have testified to the contrary if, after
6 considering all the other evidence, you believe that single
7 witness.

8 There are two types of evidence that you may
9 consider in properly finding the truth as to the facts in
11:50 10 the case. One is direct evidence, such as testimony of an
11 eyewitness. The other is indirect or circumstantial
12 evidence, the proof of a chain of circumstances that
13 indicates the existence or nonexistence of certain other
14 facts. As a general rule, the law makes no distinction
11:51 15 between direct and circumstantial evidence, but simply
16 requires that you find the facts from a preponderance of all
17 the evidence, both direct and circumstantial.

18 When knowledge of a technical subject matter
19 may be helpful to the jury, a person who has special
11:51 20 training or experience in that technical field -- he or she
21 is called an expert witness -- is permitted to state his or
22 her opinion on those technical matters. However, you're not
23 required to accept that opinion. As with any other witness,
24 it's up to you to decide whether to rely upon it.

11:51 25 In deciding whether to accept or rely upon the

Jury Charge

1 opinion of an expert witness, you may consider any bias the
2 witness -- any bias of the witness, including any bias you
3 may infer from the evidence that the expert has been or will
4 be paid for reviewing the case and testifying, or from
11:52 5 evidence that he or she testifies regularly as an expert
6 witness and his or her income from such testimony represents
7 a significant portion of his or her income.

8 Any notes that you have taken during the trial
9 are only aids to memory. If your memory should differ from
11:52 10 the notes, you should rely on your memory and not on the
11 notes. The notes are not evidence. A juror who has not
12 taken notes should rely on his or her independent
13 recollection of the evidence and should not be unduly
14 influenced by the notes of other jurors. Notes are not
11:52 15 entitled to any greater weight than the recollection or
16 impression of each juror about the testimony.

17 When you retire to the jury room to deliberate
18 on your verdict, you may take this charge with you as well
19 as the exhibits which the Court has admitted into evidence.
11:52 20 Select your foreperson and conduct your deliberations.

21 If you recess during your deliberations,
22 follow all the instructions that the Court has give to you
23 about or on your conduct during the trial. After you have
24 reached a unanimous verdict your foreperson is to fill it in
11:53 25 on the form your answers to the -- no -- fill in on the form

Jury Charge

1 your answers to the questions. Do not reveal your answers
2 until such time as you are discharged, unless so otherwise
3 directed by me. You must never disclose to anyone, not even
4 to me, your numerical division on any question.

11:53 5 If you want to communicate with me at any time
6 please give a written message or question to the bailiff,
7 who will bring it to me. I will then respond as promptly as
8 possible, either in writing or by having you brought into
9 the courtroom so that I can address you orally. I will
11:53 10 always first disclose to the attorneys your question and my
11 response before I answer your questions.

12 After you have reached a verdict, you're not
13 required to talk with anyone about the case unless I order
14 otherwise.

11:54 15 We're now at Instruction No. 1 on Page 7.

16 "Copyright" is the name for the protection
17 that the law extends to an author of an original work
18 against the unauthorized appropriation of that work by
19 others. You are probably accustomed to hearing the word
11:54 20 "author" used for writing, such as a novel, but under the
21 copyright law any creator of an original work that is
22 protectable under the copyright laws is referred to as an
23 "author". That is the term we use in copyright law for the
24 creator of an original work.

11:54 25 The owner of a copyright, generally, has the

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1 right to exclude any other person from reproducing,
2 preparing derivative works, distributing, performing,
3 displaying or using the work covered by a copyright for a
4 specific period of time. One who produces a copyright work
11:55 5 or prepares derivative works during the term of the
6 copyright infringes the copyright unless given permission to
7 do so by the copyright owner.

8 A copyrightable work can be a literary work,
9 architectural work, musical work, dramatic work, pantomime
11:55 10 work, choreographic work, pictorial work, graphic work,
11 sculptural work, works fixed in a semiconductor chip product
12 or even a computer program.

13 This case involves copyright in "architectural
14 works". "Architectural works" are designs of buildings as
11:55 15 embodied in any tangible medium of expression, including the
16 building itself, as well as the architectural plans or
17 drawings for the building. The work includes the overall
18 form as well as the arrangement and composition of spaces
19 and elements in the design, but does not include individual
11:56 20 standard features. "Standard features" are staple building
21 components, such as doors, windows and staircases,
22 et cetera. These are not themselves protected by copyright,
23 but the design of the building including them is protected.
24 Copyright protection for an architectural work may encompass
11:56 25 both architectural plans and constructed buildings.

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1 This case also involves copyrights and
2 "technical drawings". "Technical drawings" are two-
3 dimensional drawings, which can be architectural plans. The
4 subject matter depicted in the technical drawings need not
11:56 5 itself be protected by copyright for the technical drawing
6 to be protected, nor must the technical drawings meet any
7 particular artistic or technical quality or level of detail
8 to enjoy legal protection.

9 Now we talk about Elements of Copyright
11:57 10 Infringement.

11 Preston Wood & Associates, LLC, contends that
12 the Defendants infringed its copyrights in its architectural
13 works and technical drawings. Copyright is the exclusive
14 right to "copy".

11:57 15 As used in this charge, "copying" is a
16 shorthand reference to any infringement of the copyright
17 holder's exclusive right, not just a literal copying. You
18 are instructed that a copyright holder has the exclusive
19 rights to do and to authorize others to do the following:
11:57 20 to reproduce the copyrighted work, to prepare derivative
21 works that are based on the copyrighted work, and to
22 distribute copies of the copyrighted work to the public by
23 sale, rental, lease or lending. A "derivative work" is a
24 work that's based upon one or more pre-existing works,
11:57 25 including a revision, transformation or adaptation of that

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1 preexisting work. A work may be "copied" by creating a
2 derivative work -- that is, a work that revises, transforms
3 or adopts the work.

4 Architectural work may be "copied" by
11:58 5 constructing or selling a building that is based on the
6 protected design.

7 To establish infringement of its copyrights in
8 this case, Preston Wood & Associates, LLC, must prove
9 copying of its works by the Defendant.

11:58 10 Originality. "Original", as that term is used
11 in copyright law, means only that the work was independently
12 created by the author as opposed to copied from other works
13 and that it possesses at least some minimal degree of
14 creativity.

11:58 15 Now, what's Protected and Unprotected
16 Elements?

17 Although a work may be copyrightable as a
18 whole, not every portion or aspect of a copyrighted work is
19 given copyright law's protection. Not all copying is
11:59 20 copyright infringement. The mere fact that a work is
21 copyrighted does not mean that every element of the work may
22 be protected. Infringement, therefore, requires copying of
23 "constituent elements of the work that are original."

24 The protected elements of an "architectural
11:59 25 work" do not include individual standard features, such as

Jury Charge

1 windows, doors and other staple building components. To
2 support a claim of copyright infringement, the copy must
3 bear a substantial similarity to the protected aspects of
4 the original.

11:59 5 Under the doctrine of scènes à faire copyright
6 protection is denied for those expressions that are
7 standard, stock or common to a particular topic or that flow
8 necessarily or naturally from a common theme or setting.
9 Furthermore, where a particular expression is common to the
12:00 10 treatment of a particular idea, process or discovery, it is
11 lacking in the originality that is required for copyright
12 protection.

13 When an idea can be expressed in very few
14 ways, copyright law does not protect that expression,
12:00 15 because doing so would confer a de facto monopoly over the
16 idea. In such cases idea and expression are said to be
17 "merged".

18 As I mentioned before, "copying" is a
19 shorthand reference to any infringement of the copyright
12:00 20 holder's exclusive rights, not just literal copying.

21 In order to prevail on its copyrighted claim
22 Preston Wood & Associates must prove that a Defendant
23 "copied" its works.

24 Such copying can be proved by direct or
12:01 25 indirect evidence. An example of direct evidence would be

Jury Charge

1 an admission by a Defendant that the Defendant copied
2 Preston Wood & Associates's work or testimony of someone who
3 saw the work being copied or who was directed to copy the
4 work. However, proof of that nature is often not available
12:01 5 in copyright cases. Preston Wood & Associates may create a
6 presumption of copying by evidence establishing that the
7 Defendant had access to the copyrighted work and that the
8 Defendant's work is probatively similar to the copyrighted
9 work.

12:01 10 You may find that a party had "access" to a
11 Preston Wood work if that party had a reasonable opportunity
12 to view that Preston Wood work, directly or through third
13 parties, before the accused work was created.

14 Preston Wood does not need to prove that a
12:02 15 party actually viewed a Preston Wood work in order to
16 establish access to it. Rather, Preston Wood need only
17 establish that a party had a reasonable opportunity to view
18 a Preston Wood -- the Preston Wood work before it created
19 the accused work.

12:02 20 "Probative similarities" are those
21 similarities that, in the normal course of events, would not
22 be expected to arise independently in the two works.

23 In evaluating whether there are probative
24 similarities, you should consider all aspects of the works
12:02 25 and not just the aspects of the copyrighted work protected.

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1 You are not required to find that the whole of a defendant's
2 work largely replicates the whole of a copyrighted work.

3 These are not the only questions that may
4 arise on the issue. You may consider any relevant
12:03 5 circumstances -- that is, any circumstances from which you
6 may draw the inference either that the copying has taken
7 place or that copying has not taken place.

8 If you find, however, considering all the
9 circumstances, that copying has taken place by a
12:03 10 preponderance of the evidence, then Preston Wood has
11 sustained its burden on that particular issue.

12 Now we're at No. 8 and we're looking at
13 substantial similarity.

14 I am going to -- I'll say "Preston Wood".

12:03 15 That's the Plaintiff in the case. I am going to just -- It
16 will move along a little quicker.

17 In order for the Plaintiff to recover for
18 copyright infringement, it must also prove that any copies
19 or derivative works made by Defendants are substantially
12:03 20 similar to the Plaintiff's architectural work. "Substantial
21 similarity" means "copying of a constituent elements of the
22 work that are original." The works are substantially
23 similar if an ordinary, reasonable person would find the
24 total concept and feel of the two works to be substantially
12:04 25 similar.

Jury Charge

1 Copying is shown through a detailed
2 side-by-side comparison of the copyrighted and allegedly
3 infringing works. Therefore, to determine whether the two
4 works are substantially similar, you must make a direct
12:04 5 side-by-side comparison between the original architectural
6 work and the copy.

7 The following instruction implies to
8 Questions 1 through 8. It does not apply to Questions 9 and
9 10. So, keep in mind as you go through it these are
12:04 10 Questions 1 through 8, not instructions. The questions come
11 later, and you will see that's where you fill in the
12 blanks "yes", "no", maybe an amount of money or something
13 like that.

14 So, what we're reading now is Instruction
12:05 15 No. 9, but we're referring, later on when you start the
16 questions -- Questions 1 through 8 does not apply to 9 and
17 10.

18 As to 1 through 8: Once a plaintiff has
19 proven that it owns the copyright on an particular work and
12:05 20 that a party has infringed upon those exclusive rights, that
21 party is liable for the infringement and this liability is
22 absolute. Even where a party believes in good faith that he
23 is not infringing a copyright, he may be found liable. A
24 party is liable for "innocent" and "accidental"
12:05 25 copyrights -- copyright infringements.

Jury Charge

1 Now we move on. We're talking about profits
2 and gross revenue.

3 As to profits on gross revenue:

4 If you find that there has been copyright
12:06 5 infringement, you must next determine the amount of all
6 profits that resulted from copyright infringement. Profits
7 are awarded to prevent the infringer from unfairly
8 benefitting from a wrongful act.

9 An infringer's profits consist of the amount
12:06 10 of money it made or value it received due to the
11 infringement after deducting the expenses of producing and
12 marketing the infringing work.

13 In a copyright infringement action the
14 copyright owner must only prove the gross revenue that the
12:06 15 infringer has earned or will earn from the creation, sales
16 or rentals of the infringing item. Gross revenues are not
17 limited to actual money received but also include all value
18 received by the infringer. For example, the value of a
19 building constructed in violation of an architectural works
12:07 20 copyright can be evidence of gross revenue even when the
21 building has not been sold.

22 Upon proof of gross revenue, the burden then
23 shifts to the Defendant to prove what expenses, if any,
24 should be deducted from the gross revenues to establish net
12:07 25 profit. So, there's a shift there if you get to that. If

Jury Charge

1 the Defendants fail to adduce competent evidence of
2 expenses, the gross revenue figure stands as the measure of
3 profits.

12:07 4 Let's talk profits now relative to direct
5 expenses.

6 Defendants each bear the burden of proving
7 their direct expenses. If Defendants fail to prove such
8 direct expenses, you must find the amount of gross revenue
9 as the amount of profits.

12:07 10 For an amount to be a deductible expense, it
11 must be shown that it was actually incurred in the creation
12 of the infringing copy and that such expenditures actually
13 assisted in the creation of the infringing copy.

14 You should not consider evidence of average or
12:08 15 overall profit margins in determining direct expenses. In
16 determining the direct expenses to deduct from gross
17 revenue, you should rely only on evidence of specific
18 expenses actually incurred.

19 Now we continue. Profits - Overhead Expenses.

12:08 20 Under certain circumstances a Defendant may
21 deduct from gross revenues certain overhead expenses. Each
22 Defendant bears the burden of proving three elements to do
23 this.

24 First, each Defendant must prove that the
12:08 25 overhead expenses it wishes to deduct were actually incurred

Jury Charge

1 in the construction, marketing, rental or sale of the
2 infringing copy. Stated differently, if the expense would
3 have been incurred regardless of whether the Defendant made
4 the infringing copy, you should not include it.

12:09 5 Second, for a category of indirect or overhead
6 expenses to have been incurred in this creation of the
7 infringing copy, a Defendant must prove that such category
8 of expenses was of actual assist in the creation of the
9 infringing copy. If you cannot find, by a preponderance of
12:09 10 the evidence, that a Defendant has proven that a category of
11 indirect or overhead expenses actually assisted in the
12 creation of the infringing copy, you should not include it.

13 Third, a Defendant must proffer a "fair and
14 acceptable formula" for determining how much of the claimed
12:09 15 overhead expenses should be allocated to the infringing
16 activity.

17 Now No. 13. Now we're talking profits on the
18 concept of "apportionment".

19 An infringer who has profits from copyright
12:10 20 infringement is allowed to prove that a portion of the
21 profits resulted from factors other than the acts of the
22 infringement.

23 Each defendant bears the burden of proving by
24 specific evidence what portions of profits are attributable
12:10 25 to factors other than copyright infringement. To carry this

Jury Charge

1 burden, a defendant must prove what profits were
2 attributable solely to the efforts of others exclusive of
3 any effect of Preston Wood & Associates' copyrighted work.
4 Moreover, if non-infringing factors are so intertwined with
12:10 5 infringing factors that it is impossible to apportion
6 profits, then no apportionment is allowed.

7 All profits from the infringement in question
8 should be deemed attributable to the infringement, unless a
9 defendant proves by a preponderance of the evidence that
12:11 10 they are not. If a defendant fails to adduce competent
11 evidence that a portion of their profits was due solely to
12 factors other than the infringement, you should find that
13 all of defendants' profits from the infringement at issue
14 are the result of copyright infringement.

12:11 15 Page 27 is the blank. So, we save the page
16 there and we keep moving.

17 We're now at Instruction No. 14 on Page 28.
18 Integrity of Copyright Management Information.

19 Copyright law also protects the integrity of
12:11 20 copyright management information. "Copyright management
21 information" means any of the following information conveyed
22 in connection with copies of a work, including in digital
23 form: the title and other information identifying the work,
24 including the information set forth on a notice of
12:12 25 copyright; the name of and other identifying information

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1 about the author of the work; the name of and other
2 identifying information about the copyright owner of the
3 work, including the information set forth in a notice of
4 copyright; terms and conditions for use of the work; and
12:12 5 identifying numbers or symbols referring to such information
6 or links to such information.

7 Copyright law protects the integrity of
8 copyright management information by prohibiting the
9 intentional removal or alteration of copyright management
12:12 10 information, the distribution of altered or removed
11 copyright management information and the distribution of
12 copies of the works with altered or removed copyright
13 management information.

14 If a defendant intentionally does any of these
12:12 15 things and knows or has reasonable grounds to know that
16 doing so would induce, enable, facilitate or conceal
17 copyright infringement, the Defendant has violated the law
18 protecting the integrity of copyright management
19 information.

12:13 20 To determine the number of violations you are
21 to consider only the number of individual acts committed by
22 a defendant that violate this law.

23 On Page 30:

24 A defendant can also be liable for
12:13 25 infringement committed by another by intentionally inducing

Jury Charge

1 or encouraging direct infringement.

2 All right. Here's some definitions. I will
3 move through them quickly.

4 As used in the following jury questions --
12:13 5 we're not there yet, but the questions -- "Preston Wood &
6 Associates" means the Plaintiff. "Preston Wood &
7 Associates, LLC."

8 "Urban Living" means Defendant UL, Inc., doing
9 business as Urban Living and doing business as Urban Project
12:14 10 Management.

11 "Cameron Architects" means Defendant Cameron
12 Architects, Inc.

13 "Nagle Park Place" means the real estate
14 development located at 403 to 411 North Nagle Street,
12:14 15 Houston, Texas.

16 "Patterson Street Landing" means the real
17 estate development located at 1026 through -34 Center
18 Street, Houston, Texas.

19 "Stanford Street Landing" means the real
12:14 20 estate development located at 4312-A and B Stanford Street,
21 Houston, Texas.

22 "EaDo Place" means the real estate development
23 located at 1206 through -10 Polk Street, Houston, Texas.

24 "Mount Vernon" means the real estate
12:14 25 development located at 4504 Mount Vernon, Houston, Texas.

Jury Questions

1 Now we come to the questions.

2 Question No. 1. Did Urban Living infringe the
3 copyrights of Preston Wood & Associates?

4 Answer "Yes" or "No" to each of the following
12:15 5 projects -- I will say them one time because we're going to
6 be repeating them -- Nagle Park, Patterson, Stanford, EaDo
7 and Mount Vernon. Answer "Yes" or "No" for each of the
8 following projects.

9 Did Urban Living contribute -- did Urban
12:15 10 Living contributorily infringe the copyrights of Preston
11 Wood & Associates? Answer "Yes" or "No" for each of the
12 following projects and there are the five projects.

13 Question No. 3. Did Cameron Architects
14 infringe the copyrights of Preston Wood & Associates?
12:15 15 Answer "Yes" or "No" for each of the following: Nagle Park
16 and Mount Vernon.

17 Did Cameron Architects contributorily infringe
18 the copyrights of Preston Wood & Associates? Answer "Yes"
19 or "No" for each. Nagle Park and Mount Vernon.

12:16 20 For each -- Now No. 5. For each project for
21 which you have found that Urban Living infringed or
22 contributorily infringed Preston Wood's copyrights, what
23 were Urban Living's gross revenues and deductible expenses,
24 if any? And depending upon your answers before, you put the
12:16 25 gross amount and the deductible amount into those projects

Jury Questions

1 that you have found do apply in your prior answers.

2 I want to make sure that's correct. Everybody
3 agree?

4 MR. STROTHER: Yes.

12:16 5 MR. ZUMMO: Yes, Your Honor.

6 THE COURT: Question No. 6. For each project for
7 which you have found that Urban Living infringed or
8 contributorily infringed Preston Wood's copyrights, what
9 percentage, if any, of Urban Living's products were
10 attributable to factors other than the copyrighted work?
11 Answer in percentage of profits due to factors other than
12 infringement for those five or any of those that are
13 applicable.

14 We're on Page 39. Question No. 7. For each
12:17 15 project for which you have found that Cameron Architects
16 infringed or contributorily infringed Preston Wood's
17 copyrights, what are Cameron Architects' gross revenues and
18 deductible expenses? Answer in dollars and cents as to each
19 and answer -- fill in the blank for those that you find
12:17 20 applicable.

21 Question No. 8. For each project for which
22 you have found that Cameron Architects infringed or
23 contributorily infringed Preston Wood's copyrights, what
24 percentage, if any, of Cameron Architects' projects were
12:18 25 attributable to factors other than copyrighted works? And

Agreed Stipulations

1 there are two that you fill in as applicable.

2 Now we go Question No. 9. Did Urban Living
3 knowingly or intentionally and with the intent to induce,
4 enable, facilitate or conceal infringement create or
12:18 5 distribute copies or derivatives of Preston Wood's
6 copyrighted works from which Preston Wood & Associates'
7 copyright management information had been altered or
8 removed?

9 Now, there are four there. Answer "Yes" or
12:18 10 "No" as applicable to those four, if any. Well, you need to
11 answer "Yes" or "No" as to each.

12 No. 10. For each project on which you have
13 answered "Yes" to No. 9 -- So, this is what we call
14 "predicated". Assuming, you say, for each project you have
12:18 15 answered "Yes" on 9, how many times did Urban Living do so?
16 So, you look at 9 and you see if it's a positive answer and
17 then you answer the number of violations to that respective
18 property.

19 The next thing we have is Agreed Stipulations.
12:19 20 Remember, those -- one of the attorneys read in all those
21 stipulations and I said it was in abbreviated form? We have
22 on Pages 1, 2, 3, 4, 5 -- Do we have 5? Well, let's see.
23 1, 2, 3 -- Oh! Here it is -- 4, 5, 6, 7, 8. And then we
24 move on and there's on Pages 7, 9, 10, 11, 12, 13, 14, 15,
12:19 25 16, 17 and it goes through to 34 -- You can see you need to

Agreed Stipulations

1 read them or at least get a feel for them.

2 So, technically, I am supposed to say make
3 sure you read them. It was generally summarized and a lot
4 of it was referred to during the trial. I put this in here
12:20 5 so, at least in the record, the jury had a copy of what was
6 agreed and didn't need to be independently proved. So,
7 that's why we put that in there for you.

8 Now, once you have reached a unanimous verdict
9 as to all the answers or lack of an answer, depending upon
12:20 10 what it is -- but once you reach your unanimous agreement,
11 then you look to the last page. The very last page is the
12 verdict form. Then, at that point, after everything is
13 filled in correctly, the presiding juror will sign it and
14 date it and then inform the marshal -- you will have a U.S.
12:21 15 marshal outside the door -- that you have reached a verdict,
16 and then you come back in here and return the verdict.

17 I want to thank the attorneys for working on
18 this yesterday. It was quite an academic exercise. Now, of
19 course, some of it you may have questions about, but the
12:21 20 attorneys now will be going in and they'll fill you in on
21 what they feel is important, their interpretation of what's
22 in there; but, remember, the law -- that's my department and
23 the facts are your department.

24 So, what we have now is -- each side has 45
12:21 25 minutes -- well, we said that it takes about a minute a

Closing Argument by Mr. Zummo

1 page. In any event, we're now at 12:20. The Plaintiff goes
2 first. Remember, they have the burden of proof, except on
3 some things you notice I said in there the Defendant has got
4 the burden of proof. But, generally, in every case the
12:21 5 larger burden of proof or the more burden of proof is on
6 plaintiff. They bring the case. So, they'll go and they'll
7 reserve a little bit of time. So, now the clock is back on
8 just for the purpose of the voir dire.

9 And, counsel, go right ahead.

12:22 10 MR. ZUMMO: Thank you, Your Honor.

11 THE COURT: I know you want the screen. You want
12 the light out or tell me when you want it?

13 MR. ZUMMO: Yes, it can go down.

14 THE COURT: Is your unit on?

12:22 15 MR. BONHAM: You're good.

16 THE COURT: I have the time. Go right ahead.

17 MR. ZUMMO: On behalf of Preston Wood & Associates,
18 Sam and Preston Wood, I want to thank you for being here
19 today for serving on this jury and for the very close
12:22 20 attention that we can tell that you have paid to all of the
21 witnesses and all of the documents that have been presented
22 to you so far.

23 We know that you have done your duty up to now
24 in this case. It's not always easy to pay attention when
12:22 25 you just have to sit and watch what other people do, but I

Closing Argument by Mr. Zummo

1 have been -- as you can probably tell from the color of my
2 hair, I have been doing this for a little while. It's been
3 a little bit more than 35 years. And oftentimes we see at
4 least one juror who looks like they're working double shifts
12:23 5 and they might be dozing in the jury box, but you all have
6 been paying very close attention and we thank you very much
7 for that. We know you have done your duty so far. We know
8 you will continue to do your duty in deliberating in this
9 case in reaching a fair verdict.

12:23 10 This is a case about architectural copyrights.
11 And what we'd like to do is just go straight to the Court's
12 jury charge, and I am just going to talk about some of the
13 definitions that Judge Hittner has read to you and we're
14 going to cover this in the order of the questions that are
12:23 15 at the end. What we're going to do on behalf of Preston
16 Wood is try to summarize the evidence that we think is
17 important on these different questions that you have to
18 answer.

19 The case involves architectural works and, as
12:23 20 Judge Hittner said, 'architectural works are the designs of
21 buildings as embodied in any tangible medium with
22 expression, including the building itself, as well as
23 architectural plans or drawings.' It includes 'the overall
24 form, as well as the arrangement and composition of spaces
12:24 25 and elements in the design, but does not include individual

Closing Argument by Mr. Zummo

1 standard features, such as doors, windows and staircases.'

2 Now, these are not protected themselves by
3 copyright. And Preston Wood is not here saying, 'If you use
4 a stair in a building you have violated our copyrights. If
12:24 5 you use a door you have violated our copyrights.'

6 What we hope we have shown in this case -- and
7 it's consistent with the law -- is what's protected is the
8 way you use doors and stairways and arrange rooms. It's the
9 arrangement and composition. And that's where the
12:24 10 creativity comes in. And we think that the evidence that
11 has been presented to you has shown that.

12 Now, what was it that we -- how did we get
13 started in this case? We had a contract and it had --

14 Well, let's go here. This is Question No. 1
12:25 15 on Page 33. The first question is: Did Urban Living
16 infringe the copyrights of Preston Wood? What should we
17 think about to answer that question?

18 Well, first, let's go to the license
19 agreement. It's going to be Plaintiff's Exhibit No. 1 that
12:25 20 you will have to look at as you deliberate. And that
21 agreement had a term right up front about what Urban Living
22 had to do to have the right to use these designs, and we
23 think the evidence has shown that they didn't do that for
24 the five designs that they copied to create the five
12:25 25 projects that we have presented evidence to you here.

Closing Argument by Mr. Zummo

1 In this, there's an agreed fact, at the end of
2 your jury charge, that Preston Wood never gave any written
3 permission to allow Urban Living to sublicense the
4 modification of Preston Wood's works by other builders.

12:26 5 You heard testimony from Sam Wood about why it
6 was important that anyone who got access to our works from
7 Urban Living had to acknowledge and agree to follow the
8 rules in this agreement. And it's an agreed fact that,
9 whether they were builders or architects or other designers,
12:26 10 Urban Living never provided us any proof that these people
11 had agreed to follow our rules. We now know that they
12 didn't.

13 Now, in the jury charge this is a term that we
14 think is important. It's from Page 10. It's a "derivative
12:26 15 work". "A 'derivative work' is a work that's based upon one
16 or more pre-existing works, including a revision,
17 transformation or adaptation..."

18 And here's what's important. A work may be
19 copied by making a derivative if you make the derivative
12:27 20 without permission.

21 Another important concept in this case is that
22 you can copy an architectural work by constructing or
23 selling a building that's based on that design. And it's
24 infringement to do that, if you build or sell a building
12:27 25 based on a protected design, without getting the copyright

Closing Argument by Mr. Zummo

1 owner's permission.

2 Now, we know, because it's agreed and
3 Mr. Cameron admitted to it on the witness stand, that he
4 copied the D5-214 to create what he called Nagle Park Place.
12:27 5 He had our CAD files. He copied them onto his computer and
6 then he used those CAD files and modified them to create the
7 drawings that he called his design.

8 This is a word that's going to come up, I
9 think, a lot during my remarks and in Mr. Strother's
12:27 10 remarks. It's the concept of what is "original".

11 "Original" is the only thing that's protected
12 by copyright. Things have to be original. And, as that
13 term is used, it has a very special meaning. It "means only
14 that the work was independently created by the author, as
12:28 15 opposed to copied from some other work, and that it
16 possesses at least some minimal degree of creativity."

17 When you're asked the question about
18 infringement you have to find substantial similarity between
19 the Defendants' works and our works, and the key terms
12:28 20 there, we think, are on Page 19 of the charge, because
21 "'Substantial similarity' means 'copying of constituent
22 elements of the work that are original.'"

23 Then, when you compare those parts that are
24 original, "the works are 'substantially' similar if an
12:28 25 ordinary person would find that the total concept and feel

Closing Argument by Mr. Zummo

1 of the two works is substantially similar."

2 And the law says "copying is shown through a
3 detailed, side-by-side comparison of the...works." We did
4 that for you.

12:29 5 And let's just look at these very quickly.
6 You're going to remember them. And what we've tried to do
7 on these slides -- if you look on the bottom corner, these
8 are the exhibit numbers to compare that we went through with
9 Preston Wood and Susan Labarthe.

12:29 10 Comparing the Preston Wood D5-214 and
11 Mr. Cameron and Urban Living's Nagle, the first obvious
12 thing is that they took our copyright notice and put it in
13 the bottom corner. Strangely, they took the word "Copyright
14 2005" off, but they left the terms of the copyright notice
12:29 15 on there. This is proof, as Mr. Cameron admitted, that he
16 was using our CAD file and this just got copied over.

17 But the rearrangement of it was never
18 explained, but that's what gave -- that's what started all
19 of this. That's why Sam got that phone call from somebody
12:30 20 at Oppidan saying, 'We need your permission to get a set of
21 these from the city and they won't give it to us because
22 your copyright notice is on there.' That's how we found out
23 well over a year and a half after they told us, 'We're not
24 using this plan.'

12:30 25 We saw -- and I will flash through these

Closing Argument by Mr. Zummo

1 quickly, but we don't need to spend a lot of time on them.

2 We saw the comparisons of the elevations, the

3 first floor plan, the second floor plan, the third floor

4 plan. And what we went through with Preston, we did a lot

12:30 5 with these plans. And you remember that. Preston explained

6 his design process, all of his thinking, all of his reasons

7 for doing what he did to design this plan. He made creative

8 decisions and he had to choose between lots of different

9 things that could have been done to fit this 20-by-40-foot

12:31 10 footprint or slab.

11 When Susan Labarthe testified before you she

12 confirmed that the things that Preston did were in fact

13 creative, that they were in fact design decisions among

14 other options, that they didn't have to be done this way.

12:31 15 And she also confirmed that in these side-by-side

16 comparisons; that the Urban Living designs copied not just

17 the door or the staircase as a standard stock element, but

18 they copied the creative things that Preston had put into

19 his designs.

12:31 20 We think that proves copyright infringement.

21 It proves "substantial similarity" as defined by

22 Judge Hittner in this charge. And that goes on for all of

23 the plans that you see here.

24 I want to look right now -- What we're looking

12:32 25 at right now are the comparisons between the Preston Wood

Closing Argument by Mr. Zummo

1 plan and the Nagle advertising from Urban Living. As you
2 can see here, we have flipped it so that you can tell that
3 the master matches the master, that the stairway is in the
4 same general place. But I'm on this third floor plan
12:32 5 because of an issue that has been raised, and we believe
6 it's an issue that is a false issue.

7 There was a claim made back in that e-mail --
8 and we'll look at that in a minute -- that Mr. Cameron had
9 to redesign the whole plan because he found a mistake in the
12:32 10 stairway detail on the Preston Wood plan. Now, Preston
11 talked about that and, all they had to do -- and he's done
12 it in other plans where that's happened -- is move a beam
13 that's up above the stairway about 9 or 10 inches and that
14 solves the whole issue. It gives you the head clearance
12:33 15 that you need.

16 And what was interesting during the testimony
17 of Mr. Cameron is -- Mr. Strother asked, 'Did you have to
18 design the stair because of that mistake?' And I don't know
19 if you caught this, but what Mr. Cameron said was, 'Well, we
12:33 20 were already redesigning the stairs when we found the
21 mistake.' And the reason for that is, when they decided to
22 flip the plan -- because, remember -- this is to show you
23 the comparison -- but in their design the master bedroom and
24 the living room are on this side over the garage. When they
12:33 25 flipped that, they had to rearrange the third floor and

Closing Argument by Mr. Zummo

1 that's where they came up with this goofy walk down, you
2 know, six or eight steps to a landing, walk back up to get
3 across.

4 They were doing that before they ever found
12:33 5 the mistake, and that's evidence that they were not telling
6 the truth about what they did and why they did it. And we
7 think that is going to be evidence later, when you're asked
8 the question about whether things were done intentionally
9 here, because that falsehood, trying to pick a mistake and
12:34 10 blame this whole redesign when the redesign is because you
11 wanted to flip it front to back -- By not telling the truth
12 about that, we think that's evidence of an intentional
13 copyright infringement which factors into one of the last
14 questions that you're going to be asked.

12:34 15 Remember this? Susan Labarthe talked about
16 it. Cabinet details. Now, a cabinet is one of those things
17 that you might call a standard feature. Why are these
18 important? Well, these were identical. They were taken
19 straight from our design. They show up exactly the same way
12:34 20 in the Nagle Street design of Mr. Cameron. And the kitchen
21 is different. It's arranged differently; so, they don't
22 have these cabinets. They don't have the fixtures and the
23 sinks and stuff in the same place, but the details they
24 copied straight over. Absolute proof that they were
12:35 25 directly copying the Preston Wood plans.

Closing Argument by Mr. Zummo

1 Now, you saw all of these. I am going to go
2 through them pretty quickly. But the same thing is true for
3 the 175 plan and the Patterson Street Urban Living design.
4 The elevations are similar. The first and second floor
12:35 5 plans are similar. The third floor plan is similar. The
6 roof plan is similar.

7 Same thing for EaDo. First floor, second
8 floor, third floor, the roof.

9 The same thing for 6050 and Stanford Street
12:35 10 Landing.

11 But I am going to stop here for a second
12 because there is one difference about this one in our case.

13 One of the instructions that you have is an
14 instruction that you can presume that there was copying if
12:36 15 there is access and substantial similarity. On all, except
16 for Stanford, it is agreed that Defendants had access to
17 Preston Wood's work, for Patterson, EaDo, Nagle, Mount
18 Vernon. The one that is not agreed is Stanford.

19 Now, access -- you can find access if there is
12:36 20 a reasonable opportunity to view the Preston Wood &
21 Associates' work. Here's what's important: directly or
22 through third parties.

23 Now, what was the evidence on access to
24 Stanford? Well, you remember the name of the company
12:36 25 O-pi-dan or Oe-pie-dan. We're going to show you and you saw

Closing Argument by Mr. Zummo

1 the Exhibit 17 from the Defendants where they listed their
2 commissions that they received from Patterson, EaDo and
3 Stanford. Those were projects that were built by Oppidan.
4 And the evidence is that Oppidan had access to the Preston
12:37 5 Wood plans. Ms. Wood testified that they were licensed to
6 use the plans.

7 These three plans are in this case because
8 Urban Living copied our designs and put their versions on
9 their website. And the reason that we believe there's
12:37 10 access to the Stanford Street -- to the 6050 that became
11 Stanford Street is because they got it through a third
12 party, Oppidan.

13 And something very important that Mr. Ramani
14 said -- it was one of his answers to Mr. Strother's
12:38 15 questions -- is all of the designs that Urban Living has
16 used are available in the Urban Living showroom that he told
17 you about for anybody to pick up. So, all of those
18 marketing materials, including Stanford Street, which is an
19 unauthorized derivative of an infringing copy of Preston
12:38 20 Wood's plans, are there for anybody to pick up. And we
21 don't know who has them. We don't know what they're doing
22 with them. We don't know where they're being built.

23 That's the reason that we have to bring
24 copyright lawsuits like this; to keep control of our
12:38 25 copyrights, both for the value they represent to Preston

Closing Argument by Mr. Zummo

1 Wood & Associates and the value they represent to the
2 customers who have already played by the rules and paid us
3 properly for them.

4 Now, also, we went through these -- This is
12:39 5 the comparison of Stanford Street. And you saw this
6 comparison with Preston. The first floor plans are similar.
7 The second floor plans are similar.

8 The Mount Vernon is so identical that it was
9 impossible to even find any big differences, although the
12:39 10 one that was there they didn't use -- Remember, they didn't
11 change the square footage total even though they added
12 square footage. On Mount Vernon, like Nagle, they admit
13 that they used our CAD files to make their copies.

14 So, these are -- You saw the evidence of this.
12:39 15 These are so similar that it was impossible to find real
16 changes.

17 Can we go back.

18 Now, Preston Wood, as I said, described the
19 process, his creative decisions that he made. Suzanne
12:39 20 Labarthe testified, as an architect, that these were in fact
21 creative decisions and that for each of these side-by-sides
22 what was copied was the creativity, not just the standard
23 features.

24 We believe that the evidence here is enough,
12:40 25 that we have more than carried our burden for you to find

Closing Argument by Mr. Zummo

1 that there was infringement on all five of those projects.

2 Now, what do they say about all this?

3 One thing, they brought Professor Bachman

4 here. And I know I took him to task on it because it,

12:40 5 frankly, offended me to have somebody who had never met

6 Preston Wood, never talked to Preston Wood, didn't come to

7 the courtroom to listen to his testimony and never heard any

8 description of how Preston designed all of these plans, but

9 what he was sure of is: To say that the D5-214 is a solid

12:40 10 piece of thinking, design and planning is a stretch.

11 Well, you heard Preston Wood testify and you

12 can decide for yourself. Because, while Professor Bachman

13 is an architecture professor and falls under that category

14 that Judge Hittner described as an expert witness, expert

12:41 15 witnesses are just like any other witnesses when it comes to

16 evaluating their credibility. You can decide whether

17 Professor Bachman's opinions are credible when he's willing

18 to say that Preston Wood's work did not involve thinking,

19 designing or planning.

12:41 20 Professor Bachman is an interesting case for

21 me and I think it's, actually, sad because he's a professor

22 of architecture. You have got to assume he got into that

23 field because he likes architecture. And he's a professor

24 of architecture at the University of Houston in Houston, but

12:42 25 he's obviously not impressed with the architecture of homes

Closing Argument by Mr. Zummo

1 that people actually live in in Houston. Remember, he said
2 they all have these sort of fake decorative elements on the
3 front, but, otherwise, they're not really architecture.

4 I hope for his sake that, you know, if he gets
12:42 5 to the point where he can retire, that he finds a place to
6 live where he actually enjoys looking at the architecture
7 around him and living in houses that other people -- that
8 his neighbor and other people in the community make their
9 homes. But he certainly doesn't seem to be very happy with
12:42 10 the architecture of his own city now, and I think that's
11 very sad.

12 What else do they say?

13 Mr. Ramani just said, well, design is not
14 important; design is just a tiny bit of the value of any
12:43 15 kind of house.

16 And in evaluating the credibility of
17 Mr. Ramani on that statement, I would ask you just to ask
18 some questions, and those questions have to do with is what
19 he's saying in this courtroom consistent with what he's
12:43 20 actually done in his business. Because if it's true that
21 all of these townhouses are the same, well, why isn't every
22 Urban Living townhouse the same design? It works for
23 McDonald's. Why aren't they just taking the same thing and
24 cookie-cutter building it everywhere? They wouldn't have to
12:43 25 worry about architects or license agreements or designers.

Closing Argument by Mr. Zummo

1 What they really did -- and he testified to
2 this -- is that they had licensed designs in the past from
3 Preston Wood. I think his total was 40 or 50 designs that
4 they had licensed, 40 or 50 different ones they chose to pay
12:44 5 separately for every time.

6 And then why did they do this agreement? As
7 everybody said, this is an unusual custom agreement that
8 neither side had done before.

9 He wanted access to the thousands of Preston
12:44 10 Wood designs, the townhouses that Preston has been designing
11 in Houston since the early 1980s, more than 35 years. They
12 wanted access to that. He wanted first dibs on those for
13 anything that was going to be built inside the beltway. Why
14 would he do that if design wasn't important? And why would
12:44 15 he do that if they're all the same?

16 Now, are all these designs the same? We're
17 going to get to that in one second, but let's look at this
18 exhibit which you saw and you know that we have asked a lot
19 of questions about.

12:45 20 This is the e-mail where they told Sam that
21 they wanted their money back for the D5-214 because they had
22 designed a new plan from scratch and 'We didn't even use
23 this plan.' Well, those statements are false. We know
24 they're false. Everybody admitted that they were false.

12:45 25 But the question is why did they wait so long

Closing Argument by Mr. Zummo

1 to admit that they were false? Why did they wait until this
2 lawsuit and the Friday of testimony before they admitted
3 that they were false?

4 The thing that is telling about this is, if it
12:45 5 is true, as Urban Living and its counsel want you to
6 believe -- if it is true that it's okay to copy as long as
7 you don't copy protected elements -- and that's their
8 case -- why did they tell these lies in this e-mail? Why
9 didn't they say, 'Sam, we want a credit back for Plan D5-214
12:46 10 because it doesn't have any protectable elements'? 'And,
11 Sam, by the way, we're going to go ahead and use Plan D5-214
12 because we're only going to copy the non-protectable
13 elements?' 'And we're telling you this up front because
14 that's what we're going to say later if there's a lawsuit.'
12:46 15 'And we're just going to tell you the same thing in 2014, in
16 an e-mail, so that we're going to be consistent if you ever
17 say anything differently and we have to prove this in a
18 lawsuit.'

19 They didn't tell Sam in 2014 what they're
12:46 20 telling us in this courtroom. And I would suggest to you
21 that they didn't do that because what they're telling us in
22 this courtroom is not true. They knew that they were
23 infringing and they didn't want Preston Wood to investigate
24 and find out.

12:47 25 Because if you had -- if it was true that

Closing Argument by Mr. Zummo

1 Stephen realized there were some major issues with the
2 stairs -- and we know what that is -- it was the stair
3 detail that Preston said you move the beam 9 inches and you
4 solve it -- wouldn't it have made more sense to have just
12:47 5 said, 'We found this little problem. Preston, did you know
6 it was here? What would you do about it?' Why not go back
7 to the person that actually designed it before you say to
8 yourself, oh, we have to draw a completely new design?

9 Obviously, if they had done that, that would
12:47 10 have said, 'We're going to use your design.' It's going to
11 say, 'We're not drawing the plan from scratch and we are
12 going to use this plan.'

13 The fact that they didn't come back to Preston
14 to say, 'We found this mistake. Is there a fix for this?'
12:48 15 is because they wanted to conceal what they were doing, and
16 that's evidence not just of infringement but of intentional
17 infringement.

18 What else do they say about the copyrightable
19 elements?

12:48 20 The Court read you these two defenses, these
21 two instructions that are on Page 14 and 15.

22 Now, they had Professor Bachman, but nobody
23 used the term "scènes à faire". Nobody used the term
24 "merger". There is no evidence directly on that. But what
12:48 25 do they say that these terms are? This is really the core

Closing Argument by Mr. Zummo

1 of Urban Living's defense here.

2 There is no copyright protection for
3 expressions that are standard stock, common, particular
4 expressions common to the treatment of a particular idea,
12:49 5 when an idea can be expressed in very few ways.

6 And then what do they say? Whether it's
7 Mr. Ramani or Professor Bachman, it's, 'Well, you can drive
8 around Houston and see designs just like this.' Well, maybe
9 one reason you can see designs just like this when you drive
12:49 10 around Houston is because Preston Wood has been doing them
11 since the early 1980s and there are thousands of people
12 living in his townhouse designs all over inside the loop in
13 the city.

14 And then the other statement I think from
12:49 15 Mr. Bachman was you can look in the *Houston Chronicle* on
16 Sunday and see those floor plans, but they didn't bring you
17 one single example of any of these supposedly common
18 designs. If there's all this stuff out there that's just
19 like the designs in this lawsuit, don't you think they would
12:50 20 have been able to bring you some examples of that?

21 The difference between their approach and
22 ours -- because we say they're not all the same, they are
23 not all identical. The difference is that we presented
24 evidence -- it was the last thing that came in, Exhibits 80
12:50 25 through 84 -- where you do have different designs. And what

Closing Argument by Mr. Zummo

1 we have got here are just a handful of examples from those
2 exhibits because we wanted to pick the ones that have that
3 40-foot-by-20-foot footprint.

4 This is Exhibit 80-C. You can see that's not
12:50 5 the same as the designs in this case.

6 This is 80-H, another different design.

7 80-J, a four-story different design.

8 80-L, four-story different design. You see it
9 has not just a straight rectangle.

12:50 10 80-M, very different design. It's 20 by 36.

11 82-B.

12 84-C. And 84 has several different floor
13 plans, all in the same development, and they're different
14 designs, even though they fit that 20-by-40-foot slab.

12:51 15 We bring these to you because --

16 THE COURT: 30 minutes has gone past.

17 MR. ZUMMO: Yes, Your Honor. Thank you.

18 -- it's not true that they're all the same,
19 that all townhouse designs are the same. But we also bring
12:51 20 these to you to show you that, if somebody is going to tell
21 you all designs are different, all designs are the same, we
22 need to see actual evidence of that. And we have tried to
23 bring that evidence to you so that you can decide for
24 yourselves, not just taking somebody's word for it that they
12:51 25 have looked in the *Houston Chronicle*.

Closing Argument by Mr. Zummo

1 When we get to the question did Urban Living
2 infringe we think the answer is "Yes" on all five projects.

3 Now, the next thing is this "gross revenue -
4 deductible expense" question, and here's where it's easy.

12:52 5 For our side, we have to prove the revenues,
6 and on the first four, for Urban Living, you will see the
7 commissions totaled in the Agreed Facts. Those are the
8 gross revenues.

9 They did have no commissions on Mount Vernon;
12:52 10 so, they have no gross revenues, Urban Living does, on
11 Mount Vernon.

12 When it comes to deductions -- or for Cameron
13 there's only two at issue, and you have evidence in
14 Exhibits 93 and 102 where it sets out what Cameron agreed
12:52 15 that he would be paid. And he's testified and Mrs. Cameron
16 has testified he didn't actually get that or they didn't try
17 to get it fully paid, but that's the right that they had to
18 get paid. And the instructions say it's the value, not just
19 the receipts. But it's up to you to decide how to fill that
12:53 20 in.

21 On expenses -- this is the meal section, but
22 remember that they have to bring you documentation for their
23 expenses. They have to bring you backup and they have to be
24 believable documents. The problem they have is there is no
12:53 25 backup for the summaries they have provided to you. And in

Closing Argument by Mr. Zummo

1 accounting Quicken terms, they didn't even lock that
2 database. They were still making changes to it after this
3 lawsuit was filed.

4 As an example of expenses that they claim they
12:53 5 can deduct but we disagree: the legal fees, including legal
6 fees for this case, PWA, over \$4,000 for that month.

7 I look -- I, really, actually didn't believe
8 that he would answer the question that way, but when I asked
9 Mr. Ramani, "Legal fees to defend copyright infringement
12:54 10 suits like this are just a cost of doing business for you,
11 aren't they?", he said, "Yes." And they want to be able to
12 not just infringe the copyrights, but reduce what they're
13 supposed to pay based on what they spend to defend the case
14 in court.

12:54 15 Now, to deduct the overhead-type expenses one
16 of the requirements is that they have to offer a fair and
17 acceptable formula. Well, we saw their formula, if you
18 remember the little math exercise we went through.

19 The first one is right. 33 goes into that and
12:54 20 you get \$5,500. Well, when we kept grading the paper, none
21 of the rest of them were right. You can get your own
22 calculator and test it. You will find there is not a single
23 correct calculation.

24 It's their burden to bring this evidence to
12:55 25 you and bring evidence of expenses. They haven't done that.

Closing Argument by Mr. Zummo

1 And it's up to you; if you find anything in there that you
2 think they did prove, fill in the number. But it's their
3 burden and it's their burden to do it in a way that's
4 believable.

12:55 5 The next question that you have is: Is there
6 a percentage of profit due to factors other than
7 infringement? And the instruction here is in terms of
8 "factors other than copyright infringement".

9 There is not a single factor that was provided
12:55 10 to you. They didn't testify to any factor in the terms of
11 this instruction. And, very importantly in the law, if the
12 non-infringing factors are so intertwined with infringing
13 factors that it's impossible to apportion profits, then no
14 apportionment is allowed.

12:56 15 There is not a single thing, in terms of value
16 that they sell to their customers, that doesn't require the
17 townhouse to be there. There is no value to the location.
18 There is no value to anything else if there is no townhouse
19 there.

12:56 20 And the townhouses were based on our designs.
21 They are infringing copies. If there is anything, it's
22 intertwined, and we believe the answer to that question
23 should be "Zero".

24 Now, this is the question about copyright
12:56 25 management information, and what you will see here is: "Did

Closing Argument by Mr. Zummo

1 Urban Living, knowingly or intentionally and with intent to
2 induce, enable, facilitate or conceal infringement, create
3 or distribute copies or derivatives of Preston Wood &
4 Associates' copyrighted works from which Preston Wood &
12:57 5 Associates' copyright management information had been
6 altered or removed?"

7 We walked through this. Mr. Ramani said there
8 was no mention of Preston Wood or its copyright notice on
9 those marketing materials. So, we believe the answer to
12:57 10 this should be "Yes" on every one of these projects, of
11 these four.

12 The copyright management information is
13 defined in the license agreement, Paragraph 4. It includes
14 our copyright notice. And the reason this is the law is,
12:57 15 when these things are out there, when they're distributed
16 without our knowledge, not only do we not know who has them
17 and what they're doing with them and what they're building;
18 the people who receive these don't know that they belong --
19 the designs belong to Preston Wood. There are people who
12:57 20 could be out there who got these communications, got these
21 distributions from Urban Living and who think they have
22 every right to use our plan when, in fact, that's not the
23 right thing.

24 Now, how many times? That's the last
12:58 25 question.

Closing Argument by Mr. Zummo

1 It's an agreed fact that they distributed
2 these. It's an agreed fact that they said that they created
3 the plans and that they put them on their website. They
4 also sent e-mails. Now, how many -- We think the answer
12:58 5 should be "Yes", as I said.

6 How many times? Well, for the e-mails,
7 Mr. Ramani testified 8- to 15,000 times for that Nagle
8 distribution. And what I'd ask you to do is either answer
9 this with this number for either Nagle or EaDo but not for
12:58 10 both because it was one -- they were both sent out together.
11 So, it's not a separate -- it's not a double-dip situation.

12 And then, for the website, this is the
13 Plaintiff's Exhibit 113. It has the page views and 8,500
14 for Nagle, 3,700 for Patterson, 7,000 for EaDo.

12:59 15 And this "bounce rate" testimony from
16 Mr. Ramani -- I'm not sure I followed it, but if you believe
17 that this bounce rate means that 63 percent of the people
18 who got on the website didn't actually look at it -- if
19 that's what you believe the evidence shows, you're welcome
12:59 20 to discount those main numbers by whatever the bounce rate
21 is. We're not trying to get the biggest number possible
22 here. We're trying to get the accurate and truthful number.

23 Now, what we are here about is protecting the
24 lifetime of work that Sam and Preston have put into this
12:59 25 company and into their designs. And we do appreciate your

Closing Argument by Mr. Strother

1 attention and the time you have spent with us, and we know
2 that you're going to do your job, and I thank you very much.

3 THE COURT: You have got seven minutes left. You
4 started at 12:20 and it's now 12:58. So, you have got seven
13:00 5 minutes left.

6 It's now right at about 12:59. Let's take a
7 break. Everybody has been here for a while. Let's take a
8 break until 1:15, and then we'll wrap up and then it will be
9 your decision.

10 So, we'll see you back in 15 minutes. You may
11 stand. You can leave your books or take them with you. But
12 we'll see you back in 15 minutes.

13 (Brief recess)

14 THE COURT: Now we'll hear from the defense.

13:20 15 Go right ahead, sir.

16 MR. STROTHER: May I please the Court, counsel.

17 I echo Mr. Zummo's thanks to you as a jury for
18 spending almost a week with us and bearing with us through a
19 lot of evidence and a few witnesses. We appreciate the
13:21 20 effort you're putting into this.

21 Let me begin with a couple of rhetorical
22 questions that Mr. Zummo asked and then gave answers to that
23 I think we have different answers to.

24 Not surprisingly, we have different positions.
13:21 25 And the counselor's job, the advocate's job, is to

Closing Argument by Mr. Strother

1 articulate to you what the client's position is. And
2 sometimes that makes us diametrically opposed. Sometimes,
3 surprisingly, not so much.

4 One of the questions he asked was: Why did
13:21 5 Urban Living do the agreement? Why did Urban Living enter
6 into an agreement with PWA where Urban Living would pay only
7 \$250 a pop to use these plans?

8 I'm not sure what Mr. Zummo's answer was. My
9 client's answer would be \$250. Plans are necessary. No one
13:22 10 is arguing that plans aren't necessary to build a building.
11 You don't even need an architect's plans. You can use a
12 designer's plans. They're necessary.

13 But the reason Urban Living went into that
14 agreement was because of the relative inexpense compared to
13:22 15 what was going on. We're talking about townhomes that cost
16 between 300- and \$500,000. So, it makes sense to pay
17 someone \$250.

18 Another question was about the "from scratch"
19 e-mail. He said why did they lie at that point, why did
13:22 20 Fina Reisinger lie and say that that was from scratch.

21 I don't think that the logical conclusion is
22 that it had to have been a lie at that point and that
23 there's some giant scheme to save \$1,500 on six townhomes at
24 that point. That is not logical.

13:23 25 What is logical is what Mr. Cameron testified

Closing Argument by Mr. Strother

1 to and what Mr. Ramani testified to; that there was a
2 mistake made that they own up to, but it was a mistake,
3 starting with Mr. Cameron's employees, beginning with the
4 Plan D5-214 and then failing to just start it all over when
13:23 5 they realized that they needed to do bigger overhauls than
6 anticipated. And, remember, they spent 109 hours reworking
7 that plan.

8 The second mistake was then Mr. Cameron
9 communicating to Urban Living that that was done from
13:23 10 scratch and then Ms. Reisinger saying, 'We paid you for this
11 plan. We're not using it. There were problems with the
12 stairs. We're doing it from scratch.' Logic suggests that
13 that was a mistake and not an intentional lie involving a
14 number of witnesses, a number of people, none of whom are
13:23 15 here before you today.

16 Mr. Zummo said why didn't they just go to
17 Preston and say, 'Hey. There are stair problems. Let's fix
18 this'? The answer was given by Mr. Ramani and Mr. Wood.
19 Mr. Wood was no longer there. That's what generated this
13:24 20 agreement in the first place. There was no one at Preston
21 Wood that redesigned these plans. That's why Urban Living
22 was hiring people like Cameron Architects to have the plans
23 redone. So, they couldn't have gone there to correct the
24 problem should they have chosen to do so.

13:24 25 I said early on that I didn't think this case

Closing Argument by Mr. Strother

1 was so much about the copying; my client was admitting to
2 some duplication. I don't think my client has hidden the
3 ball on that. And I think that the attempts to argue that
4 this is a recent position are unfair.

13:24 5 The evidence before the Court, which is
6 uncontroverted, is that when Mr. Ramani was alerted that
7 there were problems with the Nagle Street plan and with the
8 Mount Vernon plan he attempted to the pay for them and that
9 effort was rebuffed. He attempted to pay the \$250 apiece to
13:25 10 use those plans and it was rebuffed.

11 The evidence, which is also uncontroverted, is
12 that Mr. Ramani then made several attempts to talk with
13 Ms. Wood and those attempts were denied.

14 So, Mr. Zummo, on Day 1, said he thought this
13:25 15 was a case involving trust or a lack of trust, and I don't
16 believe that either. We're talking about a case where, if
17 Urban Living and Cameron Architects could have made this
18 right, that attempt was rebuffed.

19 This is no longer a case, from Plaintiff's
13:25 20 perspective, about trying to get paid for the value of the
21 plans. This is a case about Urban Living and Cameron
22 Architects giving up their profits earned from other aspects
23 of the townhomes.

24 I have been thinking all during the trial why
13:26 25 is Plaintiff spending so much time focusing on things that

Closing Argument by Mr. Strother

1 have been agreed to. Because you have them in evidence.
2 You have the agreed facts. Those were agreed before trial.
3 They didn't just happen here in the middle of trial.

4 Why spend so much time parading in front of
13:26 5 you, the jury, that there was duplication on D5-214? Why
6 talk about Mount Vernon at all? What does Mount Vernon have
7 to do with it? They weren't used. There were new plans
8 done. Mr. Cameron admits that it was practically an exact
9 duplicate. There was no revenue from it.

13:26 10 I figured it out. And it's not rocket
11 science. I think everyone else has probably figured it out,
12 too. They want to show that Urban Living and Cameron
13 Architects are bad, are bad guys, bad people with evil
14 intent, and that somehow that should persuade you that you
13:26 15 should give more than the law allows, that somehow because
16 they are bad people that you should ignore the Court's
17 instructions and look at the questions and say, 'We don't
18 really care about percent of apportionment. These are bad
19 people. Zero.'

13:27 20 Intent doesn't matter. I believe I said that
21 on Day 1 to you, the jury, and the Court has now instructed
22 you that. Intent doesn't matter. Innocence doesn't matter.
23 But we spent a lot of time going through that anyway.

24 Urban Living's and Cameron Architects'
13:27 25 reaction to finding out that the plans were infringing was a

Closing Argument by Mr. Strother

1 natural one; to try to pay for it, to make it better, and
2 then to stop construction the best they could.

3 On Nagle there was supposed to be 16 units.
4 They were able to instruct the builder to stop. They only
13:28 5 built six of them, and then the builder hired a separate
6 architect to design ten others and they built those.

7 Mount Vernon. I'll be frank. Defendants got
8 lucky that something about the market caused the builder to
9 put the project on hold so that, by the time that Preston
13:28 10 Wood & Associates made the problem known, no construction
11 had started and it was easy to stop. It would have been
12 easy to accept \$250 for each of the plan's use and then let
13 the building be erected. That was rebuffed. And, so, the
14 builder restarted, and Mr. Cameron gave the builder a set of
13:28 15 stock plans that he had created.

16 When preparing for closing argument, I debated
17 one of two ways to handle going through the jury charge with
18 you. The way I was going to do it is kind of like the way
19 Mr. Zummo did it, which is go through in order, and then I
13:28 20 realized that would be spending time on some of the things
21 that I think are less important.

22 So, I want to spend the time, initially, on
23 the things that I thought or that I think are of crucial
24 importance. That's why I am going to show you a couple of
13:29 25 questions, an instruction, first.

Closing Argument by Mr. Strother

1 Let me have you look at Question No. 6.

2 Your Honor, may I dim the lights -- have you
3 dim the lights, please.

4 This is showing you two pages. Let me see if
13:29 5 I can rectify that.

6 There. Question 6 is identical in every
7 way -- That's not true. It's a companion to Question No. 8.
8 Question 6 asks this question for Urban Living. Question 8
9 asks the same question for Cameron Architects. So, they
13:30 10 differ in having different names there, but they also differ
11 in having different sets of properties listed.

12 This is the question that I called your
13 attention to during my opening statement. When I pulled out
14 the board over here, I told the jury -- I told you that this
13:30 15 was probably going to take away from architecture and go to
16 accounting. And I regretted that, but this is what's
17 important.

18 By the way, the question preceding this is the
19 one that goes into gross revenues and deductible expenses.
13:30 20 This percentage of profit due to factors other than
21 infringement is where the evidence in this case should
22 naturally take you. I have proposed responses for the other
23 questions regarding whether there was infringement,
24 regarding the amount of the deductible expenses. But I can
13:31 25 understand how reasonable people could disagree with me and

Closing Argument by Mr. Strother

1 disagree with my clients and find answers to the
2 infringement questions or the expense questions that we
3 believe are the wrong answers.

4 This one, there's only one set of evidence
13:31 5 that you have in front of you about.

6 I asked both Mr. Wood and Ms. Wood if they
7 were seeking 100 percent of the profits that Urban Living
8 had gained and 100 percent of the profits that Cameron
9 Architects had gained. Time and time I asked, met with
13:31 10 objection.

11 Finally, I got Ms. Wood -- she's the only one
12 who answered the question -- and she didn't say "Yes" or
13 "No." What she said is, "We're seeking is what the law
14 allows." And she should. But what the law allows is for
13:31 15 this jury to decide what factors -- what percentage of the
16 profit is due to factors other than infringement.

17 Mr. Ramani testified about how Urban Living --
18 And, by the way, the answers regarding profits on Urban
19 Living and Cameron Architects, you get there in a different
13:32 20 way. So, I am going to start with Urban Living.

21 Mr. Ramani testified and everyone agreed, I
22 think, that was asked that the way Urban Living earns a
23 profit is you start with the sales price first and you
24 calculate the commission based upon what that sales price
13:32 25 is. It's generally between 3 and 6 percent. No one is

Closing Argument by Mr. Strother

1 arguing about that 3 to 6 percent, and you have the evidence
2 in front of you what the actual commission was on each
3 closing. So, you can back-out the percentage, if you like,
4 but generally -- not generally -- specifically, the parties
13:32 5 are agreeing as to what the total amount of commissions
6 earned actually was.

7 Mr. Ramani then gave evidence -- gave
8 testimony that his commission, Urban Living's commission,
9 is, therefore, based upon the sales price and that as a
13:33 10 portion of his profit the amount charged for the plans was
11 only \$250, only \$250, and that the other factors -- there
12 were other factors that went into determining the sales
13 price and, therefore, his profit.

14 He mentioned land. He mentioned the materials
13:33 15 and he gave a subset of those materials that he thought were
16 of crucial importance in determining the sales price: the
17 finishes, the sinks, the hardwood floors, things like that.
18 Those things would necessarily constitute the rest of that
19 piece of pie.

13:33 20 I asked him to break down what percentage of
21 profit would those plans be responsible for and he said
22 1 to 2 percent. I showed him one example that would get
23 higher if you're dealing with a lower commission. I showed
24 him one that was 2.5 percent. And he said, generally, 1 to
13:34 25 2 percent of the profits earned by Urban Living, that's what

Closing Argument by Mr. Strother

1 is associated with the plans. Everything else comes from
2 the land, the materials and the finish. That's how the
3 price of a home is determined.

4 The instructions and our judge have called
13:34 5 your attention to the burden of proof required; and it's
6 been pointed out to you that, generally, the burden of proof
7 is on Plaintiffs on most of the evidence, but it's not true
8 on all of the questions.

9 Question No. 6, Question No. 8, undeniably the
13:34 10 burden of proof is on us, the Defendants. Let me talk about
11 what that burden of proof requires.

12 The burden of proof is a preponderance of the
13 evidence. And I don't remember if it was after you had been
14 seated in the box or whether it was during the voir dire
13:35 15 process. The Judge used an example that attorneys like to
16 use, which is you look at the scales of justice that are
17 evenly balanced, and a preponderance of evidence is that
18 amount of evidence that causes the scales to tip; some
19 amount of evidence in this hand and this hand, and the
13:35 20 preponderance of the evidence causes them to tip.

21 So, what do you do when you have empty scales?
22 What causes the scales to tip when looking at the
23 preponderance of the evidence? I don't mean to minimize the
24 amount of evidence that my clients have brought forth with
13:35 25 regard to Questions No. 6 and 8, but very little is

Closing Argument by Mr. Strother

1 required. A feather tips these. A paperclip tips these. I
2 contend we have much more than feathers and paperclips over
3 here, but a feather or a paperclip is all that we need,
4 because Plaintiffs put on no evidence whatsoever of any
13:36 5 other factors that Urban Living's profits came from or that
6 Cameron Architects' profits came from.

7 Now, Mr. Zummo is going to get up here and
8 correctly say, 'We didn't have to. We're Plaintiffs. The
9 burden of proof is on them. They have got to prove it by a
13:36 10 preponderance of the evidence.' And he's absolutely right.
11 He doesn't have to do anything to cause those scales to tip,
12 until there is a feather, until there is a paperclip; and
13 then it's incumbent upon the Plaintiffs, in a case like
14 this, to put on evidence to rebut it and get those scales
13:36 15 tipped on the other side so that no longer can Defendants
16 have met their burden.

17 This is an important point to me, this is an
18 important point to the charge and I believe it's an
19 important point to Plaintiffs on their issues. So, please
13:36 20 remember what's required here and remember that, when there
21 is zero evidence on the other side, a preponderance is just
22 a little bit of evidence.

23 Regarding this \$250 and other factors -- I
24 have a ten-year-old daughter and I was driving her to school
13:37 25 this week, and she's shown an interest in what lawyers do.

Closing Argument by Mr. Strother

1 I don't know how much she gets because she's pretty smart.
2 She asks interesting questions. And when I knew she got
3 this argument is when she understood that there are things
4 that go into selling a home, marketing a home, building a
13:37 5 home, and that you can assign dollar amounts to how much
6 those things cost.

7 So, we started about what else cost \$250.
8 What else could cost \$250? She's not gone shopping. And I
9 couldn't come up with something exactly that cost \$250, but,
13:37 10 in the ballpark, logic, common sense, says that things like
11 disposals to sinks, the sinks themselves, hardware for a
12 couple of doors in a room, maybe the amount of paint that it
13 takes to paint a foyer, shower heads and fixtures in a
14 shower. These things cost \$250.

13:38 15 And if someone walked into this courtroom and
16 said, 'I provided the windows for the bedroom and those cost
17 \$250; and, therefore, I am entitled to all of the profit
18 that people made off of the sale of that home,' that would
19 sound crazy. That would sound crazy.

13:38 20 But I believe that is exactly what Plaintiffs
21 are doing in this case, and they have done it because they
22 have refused to give you any other information about things
23 that they agree are factors that didn't cause the
24 infringement, because, truth be told, they have got to agree
13:38 25 that part of the profit came from something else.

Closing Argument by Mr. Strother

1 Mr. Zummo said people don't go out and buy
2 homes that are just pieces of dirt that don't have homes on
3 them; the plans are necessary. That's absolutely true. But
4 people don't go out looking for a place to live, a place to
13:39 5 put their children so they're zoned to an appropriate school
6 and decide that they're just going to buy a 250-dollar plan
7 and then sit on the sidewalk with it. That doesn't happen.

8 People require those plans to actually be put
9 in place by builders. They require those builders to use
13:39 10 concrete, to use plywood, to use two-by-fours and drywall to
11 make these things happen. That's where profits come from.
12 That's where sales price comes from.

13 Cameron Architects has a slightly different
14 approach. Just to be clear, I am going to turn to Question
13:39 15 No. 8.

16 Necessarily, Cameron Architects only is
17 being -- you're only being asked this question about Nagle
18 Park Place and Mount Vernon.

19 Cameron Architects doesn't sell the
13:39 20 properties; and, so, they earn a sum much differently than
21 Urban Living does. And they provided their accounting
22 information. The accounting information is pretty clear
23 about how much they got paid.

24 They received one check from the builder.

13:40 25 That was an 11,450-dollar check. That's Exhibit 7.

Closing Argument by Mr. Strother

1 Mr. Zummo says, 'But, hey, the builder promised to pay
2 more.' That's true, but Ms. Cameron told you that that's
3 not something that Cameron Architects is going to be able to
4 seek because of this lawsuit. That's not money that you
13:40 5 need to be looking at as actual gross revenue.

6 With this, Cameron Architects provided a check
7 back to Urban Living, \$5,725, which is half of that amount.
8 So, therefore, the gross revenue that Cameron Architects
9 earned was only \$5,725,000. That was meant to go to 16
13:41 10 units, not the six that were actually built.

11 And, finally, Cameron Architects provided
12 their calculations. They have some direct costs on here,
13 some direct costs that you should pay attention to, and
14 those are the payroll costs of \$1,727 which went to,
13:41 15 specifically, the 109 hours that they paid their employees
16 to work on the Nagle Street plans. Those expenses should
17 come out of the \$5,725.

18 Then you're left with overhead. Overhead is
19 in your ballpark. We contend that the overhead that was
13:41 20 incurred here should be deducted. It was associated with
21 the Cameron Architects' operation and it was prorated.
22 That's the fair and reasonable formula or, maybe, fair and
23 appropriate formula that went to deciding what portion of
24 those actually go.

13:42 25 There was an error, my error, in producing

Closing Argument by Mr. Strother

1 this one. Ms. Cameron testified that when you double --
2 because you have two employees -- when you double this
3 number, you half this number, which goes over here; and, so,
4 therefore, your overhead costs are, actually, half of what
13:42 5 is presented here. Instead of \$7,500 you're talking in the
6 ballpark of 3,750; and, so, therefore, you're talking about
7 a net profit, after overhead, of approximately \$200.

8 We haven't talked about the percent question
9 yet. That's 100 percent of the net profits.

13:42 10 But there were factors that Mr. Cameron
11 testified to and Ms. Cameron testified to that you need to
12 take into account: the 109 hours of work that went into
13 making those plans something that could be used to build six
14 townhomes.

13:43 15 So, if you make a pie chart and you find out
16 what is the payroll of 1,727 compared to the 250, you get to
17 a ballpark number of 87 percent. 87 percent of Cameron
18 Architects' meager profits were due to Cameron Architects'
19 direct efforts, not to the 250-dollar plans.

13:43 20 Let me show you the same information about
21 Urban Living. Nagle is where both parties have spent most
22 of their time; so, you have a little bit more information on
23 Nagle.

24 Urban Living has provided what their operating
13:44 25 costs are, which is their overhead per house getting to a

Closing Argument by Mr. Strother

1 specific net income for Nagle.

2 Plaintiff has an argument -- I understand
3 it -- is that there were things, perhaps, that Urban Living
4 had to pay for that maybe it would have paid for anyway.

13:44 5 Mr. Ramani said that's not entirely true.
6 These things are prorated by the number of the staff that we
7 were buying dinners for or lunches for or whatever. These
8 people were working there at the showroom. They were all
9 working on selling all of the different properties.

13:44 10 And, so, the only appropriate and fair formula
11 you can do in that situation is to look at the number of
12 houses that were sold in a given month and then break your
13 operating costs, your overhead costs, into a per-house cost
14 and then just apply it to how much the net commission was.

13:44 15 They did this in high detail for Nagle and
16 they provided other information for the other properties.
17 I'm sorry. Wrong -- That was an error. Pardon me.

18 This would be Defendant's Exhibit 17, which
19 does the calculation for the remaining three properties.

13:45 20 The calculation is the same. The number of closed houses
21 are provided and then you have this erroneous cost per home.
22 This column is the only column that has incorrect
23 information. And, thankfully, we were able to determine on
24 the fly what this error was so, when Mr. Zummo said you can
13:45 25 go into your jury room, pull out the calculator and

Closing Argument by Mr. Strother

1 determine it as an error, you can.

2 You can also just take this column and divide
3 it by this column and get the correct number. When you do
4 that, you will find this was an error that works in Preston
13:46 5 Wood & Associates' favor.

6 The actual cost per home on the majority of
7 these go up, and when you add them all together it's
8 actually a 940-dollar difference in Preston Wood &
9 Associates' favor, if you were to use these numbers. We
13:46 10 would prefer you use the correct numbers, but we understand
11 the burden is on us and we messed up this sheet. But the
12 data is intact and the data is accurate.

13 Now I'd like to go through some of the other
14 instructions, and I am going to try to do these in order, I
13:46 15 believe.

16 The first one I'd like you to look at is
17 Instruction No. 4 with me. This is an instruction that you
18 never heard Plaintiffs address in evidence at all, and this
19 happens to be something that I think should have been
13:47 20 addressed.

21 This says very clearly that the mere fact that
22 a work is copyrighted doesn't mean that every element of the
23 work is protected. These instructions altogether -- To say
24 it's a mouthful is not the right way to put it. There is a
13:47 25 lot for you to digest and synthesize and figure out what

Closing Argument by Mr. Strother

1 these instructions are -- how you are to apply them to the
2 evidence.

3 The point of this instruction is to let you
4 know that, even in a copyrighted plan, such as the ones by
13:48 5 PWA, there can be pieces in there that the law actually
6 doesn't protect even if the copyright is valid. There can
7 be things in there that aren't protectable. The kind of
8 things that are not protectable are the kinds of things that
9 Professor Bachman called your attention to, the things that
13:48 10 are standard or common or routine. He didn't use the word
11 "clichéd". Same thing.

12 He also said that to some of these solutions
13 there were only a couple of ways to solve the problem. And,
14 so, while it's true, Mr. Zummo pointed out, that no one said
13:48 15 "scènes à faire" and no one said "merger", that's because
16 witnesses don't use legal terms. Witnesses give the
17 information so the Court can instruct you on the law, and
18 you can look at what the witnesses said and see if it fits
19 the law.

13:48 20 We come back to Professor Bachman's testimony
21 in a minute. Mr. Zummo came down really hard on Professor
22 Bachman and suggested that, perhaps, he doesn't like Houston
23 and is going to be happy when he can retire somewhere that
24 is a prettier city or something like that. I think that's a
13:49 25 misconception of what Professor Bachman was saying.

Closing Argument by Mr. Strother

1 He acknowledged that townhomes are needed. He
2 acknowledged that things that are insignificant
3 architecture-wise are needed. He called them part of the
4 background. That's not an insult. That's not an insult.

13:49 5 And when -- he was cross-examined and he was
6 asked if he felt bad, essentially, for talking poorly about
7 Mr. Wood when he criticized Mr. Wood. He very clearly said,
8 'Wait a second. I'm not criticizing a human here. I am
9 criticizing a plan.' That's it. He looked at the plan and,
13:49 10 as a professor of architecture working as long he has, he
11 pointed out the elements that he thought were standard and
12 routine and necessary given the external factors there, the
13 20-by-40 footprint, for example.

14 People live in townhomes. People live in
13:50 15 houses that may look like their neighbors' houses. We're
16 not criticizing that. But that doesn't mean that the law
17 protects those identical situations, and it doesn't protect
18 a standard configuration of standard rooms that flow
19 naturally and logically.

13:50 20 I objected to Plaintiff's Exhibits 80 through
21 85, I think, which came in right at the end after Mr. Ramani
22 had testified nothing else happened. His Honor called you
23 back in. Mr. Zummo, I believe -- it could have been
24 Mr. Bonham -- read something in about what it was being
13:50 25 offered for. I put my objection into the record.

Closing Argument by Mr. Strother

1 I thought more about it, and I think you
2 should look at it. Look at them. Look at the 20-by-40
3 ones. I think Mr. Zummo was playing a little hard and fast
4 when he put in L-shaped ones that were 36 feet or 46 feet.
13:51 5 That can make a significant difference because, when you're
6 talking about something larger than 20 by 40, you can start
7 to do something interesting with the shapes.

8 But look at all of these that we built.
9 They're boxes. They're boxes. Even Nagle didn't have the
13:51 10 bowed window. Every single one of them is a box.

11 So, why do I want you to look at 80 through
12 85? I think you will find them all substantially similar.
13 I think you will find that -- Even if PWA has a catalog of
14 however many they put into evidence, when you're talking
13:51 15 about those are the same size, do you know what you're going
16 to find? Do you know what you'll find on the second floor
17 every time? An open kitchen, dining room and living room.
18 You'll find a balcony. You will find a bathroom up there.
19 And they're not going to be organized in a significantly
13:52 20 different manner.

21 You know what you're going to find on the
22 bottom floor because physics requires it? The garage.
23 There will be a two-car garage. There will be an entrance,
24 and there will be a stairwell, and there will be one
13:52 25 bedroom, one closet and one bathroom. And they're going to

Closing Argument by Mr. Strother

1 look very much alike, all of the other plans that you're
2 going to look at in this case. So, look at them.

3 Mr. Zummo test -- I'm sorry -- he didn't
4 testify. Mr. Zummo called your attention to the other plans
13:52 5 in this case, not Nagle and not Mount Vernon, but the ones
6 that were non-UPM projects -- Stanford, Patterson and EaDo.
7 And my ears perked up when he called them "Urban Living
8 designs". There is not a lick of evidence that Urban Living
9 had anything to do with those designs.

13:53 10 To the contrary, everyone that was asked
11 agreed the builder, Oppidan, hired an architect, Bill
12 Wooten, neither of whom are here. The builder had
13 Mr. Wooten design plans and then Urban Living was hired for
14 one sole purpose and that was to sell those properties.

13:53 15 Urban Living didn't receive the construction
16 plans. Urban Living received marketing plans from the
17 builder, which are different. They're not the drawings that
18 have the dimensions and elevations and all of that. They
19 are simple floor plans.

13:53 20 The reason that's important is because the
21 Plaintiffs are trying to confuse you. And I rarely suggest
22 that the other side is trying to confuse anyone. This time
23 they are. They are focusing and generating the idea of
24 intent because, as you know from the charge, intent doesn't
13:54 25 matter with copyright infringement. Innocence doesn't

Closing Argument by Mr. Strother

1 matter.

2 But where intent does matter is where the
3 Court has called your attention to. Yes, this does not
4 apply to Questions 9 and 10. Intent, absolutely, is needed
13:54 5 for those last two questions because those are different.
6 That regards the alteration and removal of copyright
7 management information. To find Urban Living has done that
8 you have to find that they knowingly did it and they
9 intended to trick people out there and to obscure copyright
13:54 10 management information. There is no evidence the burden is
11 on them this time. There is no evidence that Urban Living
12 knew or should have known that those plans could have
13 possibly infringed on PWA's plans. They received those from
14 the builder and it was hired only to sell them.

13:55 15 There is an important sentence in this
16 instruction, which I think is Instruction 14(?) Yes. This
17 sentence stands out there alone and this helps you, if you
18 ever have to answer the very last question. And I am going
19 to show you the question in a moment, but I want to call
13:55 20 your attention to it now.

21 "To determine the number of violations
22 regarding copyright management infringement you, the jury,
23 are to consider only the number of individual acts committed
24 by a Defendant that violated this law." Only look at the
13:56 25 Defendant's acts, each individual act.

Closing Argument by Mr. Strother

1 It's why I asked Mr. Ramani about the e-mails.

2 "Are you sending out 8,000 e-mails?"

3 He said, "No. It's one. We put one up

4 there."

13:56 5 "Are you delivering to 20,000 people marketing
6 plans on line?"

7 "No. They upload it one time."

8 These are individual acts. And if you
9 wondered if this case was about trust and if you think it's
13:56 10 not about money, ask yourself why Plaintiffs are asking you
11 to write something like 20,000 times for the number of times
12 that copyright management information was circulated. This
13 case is about money.

14 Plaintiff said in the closing, 'Oh, but we
13:56 15 want you to do what you think is right. We don't want to
16 double-dip.' They don't want to double-dip. They want to
17 dip in 20,000 times, 8,000 times, 10,000 times, whatever
18 they've pled the number is. What they told you in closing
19 is directly contradictory to that sentence.

13:57 20 I have about nine minutes left to go through
21 the charge with you.

22 Did Urban Living infringe? Urban Living
23 doesn't deny that there was copying, duplication, on Nagle
24 Park Place. As its advocate, I can tell you the answer to
13:57 25 that one is still "No" because the instructions tell you

Closing Argument by Mr. Strother

1 that non-protected elements can be copied.

2 And Professor Bachman, with no rebuttal from
3 anyone else, testified about what was standard. Plaintiffs
4 had the opportunity to call rebuttal witnesses after they
13:57 5 heard Mr. Bachman testify. They put on no other evidence.
6 So, you can answer "No" to that question.

7 Patterson Street Landing and Stanford Street
8 Landing and EaDo Place -- they're required to show you that
9 there are infringing plans. They don't even show you plans.

13:58 10 They showed you marketing plans. They simplified floor
11 plans that were not the construction drawings used by the
12 builder or the architect. You have to say "No" to those.

13 And Mount Vernon -- of course, Mount Vernon
14 was not sold. There was no money earned from the drawings
13:58 15 that did infringe. So, therefore, there could be no
16 infringement for the plans that were actually used. Again,
17 one of these many uncontested facts.

18 The answer to Question 2 would be the same.
19 You're getting a different question for contributorily
13:58 20 infringing, but the information and the data, the evidence,
21 you have there is exactly the same.

22 I am going to stand here while I look at the
23 others so I'm not going back and forth.

24 Cameron Architects is only being asked --

13:59 25 You're only being asked about two plans.

Closing Argument by Mr. Strother

1 Mount Vernon does not infringe. That plan
2 wasn't used. No money was earned from it.

3 Nagle Park Place. I understand why you would
4 say "Yes". He doesn't deny that Cameron Architects used
13:59 5 D5-214 as the starting point. The evidence is, however,
6 that D5-214 were full of standard, routine, common
7 arrangements of standard things; so, therefore, it's not
8 entitled to protection. We still say "No."

9 The same for Question No. 4.

13:59 10 For Question No. 5, all of that information
11 appears in the exhibits. If you get here, the information
12 regarding gross revenues is in the Agreed Facts, and the
13 deductible expenses are on the couple of exhibits which are
14 Exhibits 16 and 17 for Urban Living.

14:00 15 Here's the answer. I want to call your
16 attention -- or the question. I want to call your attention
17 to something very important here. This asks you for the
18 percent of profit due to factors other than infringement,
19 not percent of profit due to the infringement.

14:00 20 So, if you agree with what my position has
21 been that 1 to 2 percent is the amount of profit due to
22 infringement, that's not what you write there. You write
23 the 99 percent, the 98 percent, on this one, Question No. 6.

24 Question No. 7. This information comes
14:00 25 directly from the Cameron Architects' accounting documents,

Closing Argument by Mr. Strother

1 which are Exhibit 11.

2 Mount Vernon, of course, has zero.

3 THE COURT: 40 minutes has gone past.

4 MR. STROTHER: Thank you, Your Honor.

14:00 5 I walked you through how to calculate the
6 percentage of profits due to other factors for Cameron
7 Architects. That was 87 percent.

8 I am now back to the page views, the 20,000
9 page views.

14:01 10 I have highlighted a lot of provisions here
11 that I want to finish with. I mentioned that. Did Urban
12 Living knowingly or intentionally with the intent to induce,
13 enable, facilitate or conceal infringement? There's no
14 evidence of that. You could stop there.

14:01 15 Did it distribute copies or derivatives of the
16 copyrighted works from which the copyright management
17 information had been altered or removed? You don't have
18 that. You don't have that.

19 What the evidence is that they presented to
14:01 20 you are marketing plans. It could be photographs. How do
21 you remove copyright management information from a
22 photograph or other things?

23 What they are alleging is that the floor plans
24 that made it through as marketing plans somehow had the
14:02 25 copyright management information altered or removed.

Closing Argument by Mr. Strother

1 Mr. Ramani gave testimony at the very end of
2 his testimony that, when you go online, you can get the
3 stuff without the copyright. And Plaintiffs had an
4 opportunity to cross-examine him on that. They had an
14:02 5 opportunity to take you live to PWA's website and show you
6 that that was untrue. There is a reason they didn't do
7 that.

8 The answer to all of these questions has to be
9 "No." Even if you think there was copyright infringement,
14:02 10 the answer to this question has to be "No" because there is
11 no evidence that the copyright management information has
12 been altered or removed.

13 And, so, therefore, we believe you shouldn't
14 answer this question. If you must, the answer isn't in the
14:02 15 realm of 20,000 or even 10,000. You're talking about one
16 e-mail. You're talking about uploading once. In fact, for
17 Nagle Park Place and EaDo you're talking about half an
18 e-mail because they were on the same e-mail.

19 With that, I am finished. I appreciate your
14:03 20 time. You're almost there. I look forward to you spending
21 some time reading the legal treatise that is in front of you
22 and delving through the multiple binders of information.

23 We appreciate it. Thank you.

24 THE COURT: All right. You've got seven minutes
14:03 25 left.

Rebuttal Argument by Mr. Zummo

1 MR. ZUMMO: Your Honor, I will need the screen.

2 Thank you.

3 When we heard both of the Defendants talk
4 about how mistakes were made, it was kind of interesting.

14:03 5 Mr. Strother asked both of his clients, 'Are you taking
6 responsibility for your employees?' But it sure sounded
7 like Mr. Cameron was saying it was somebody else's fault
8 that the Preston Wood design got used. And it sure sounded
9 from Mr. Ramani like he didn't agree with Fina Reisinger's
14:04 10 e-mail and Mr. Cameron didn't agree with it, and she must
11 have made the mistake.

12 If they want to take responsibility for this,
13 maybe waiting until the last day of trial isn't the best
14 time to do it.

14:04 15 But what really got me in the middle of
16 Mr. Strother's argument was, well, he said it wasn't until
17 Preston Wood made the problem known.

18 Can we see Exhibit 103 again, please.

19 MR. COOPER: You're going to have to look up here.
14:04 20 I think the projector turned off.

21 MR. ZUMMO: Okay.

22 This is the e-mail we've talked about so much.
23 And the reason we made the problem known years later is
24 that's when we first found out about it, because they lied
14:05 25 about what they were doing with our plan.

Rebuttal Argument by Mr. Zummo

1 But the whole issue of was Preston still
2 around to makes the changes if there was an error, that's --
3 Sam Wood told them, 'We have looked at it. They were minor
4 to fix and we have corrected them.' So, it's not true that
14:05 5 it couldn't be done because Preston was now working for
6 David Weekley Homes.

7 I want to talk -- I don't feel that I need to
8 respond to everything Mr. Strother said and repeat the
9 things I said in the first part of this summation. I'd like
14:05 10 to talk about his apportionment argument, the answers to
11 Questions No. 6 and No. 8.

12 They have the burden of proof. They haven't
13 brought you any proof of any factor that accounts for
14 profits other than the infringement of our designs.

14:06 15 And I'd like to call your attention to Page 1
16 of the Court's charge: that "statements and arguments of
17 the attorneys are not evidence." That's all this pie chart
18 is. It's not evidence because that came from Mr. Strother,
19 not from any actual evidence that was ever brought to you.
14:06 20 They haven't met that burden of proof.

21 It's also interesting that they want to tie
22 this case to the \$250 per plan per use that the contract
23 called for them to pay, because they didn't pay that back
24 when they decided to use the plan.

14:06 25 What that argument means, if you actually

Rebuttal Argument by Mr. Zummo

1 accept their logic, is 'We cannot follow the contract when
2 we're using the plan.' 'We can lie to you about whether
3 we're using the plan. We can deny this for years.' 'We can
4 fight you for years in a courtroom, try to deduct the cost
14:07 5 of that from the recovery that the law says you should
6 receive. And, when it's all over, we're going to ask the
7 jury, oh, well, just award them the \$250 that we should have
8 paid them in the first place.'

9 If that's the way you think things should
14:07 10 work, you can accept their argument. If that's the kind of
11 conduct that you want to approve, you should accept their
12 argument.

13 We're not here to try to paint them as bad
14 guys. We're here to present the evidence to you. I never
14:08 15 said that anybody on their side were bad guys. And it's
16 very interesting that the whole idea that there are bad guys
17 is introduced by their own attorney.

18 When Mr. Strother wanted to talk about the
19 charge on the removal of copyright management information --
14:08 20 I'd like to look at that. I did talk about this. I did
21 mention this when we went through this charge, but let's
22 look at the individual acts. Let's just start with the
23 e-mails.

24 Mr. Ramani testified how many e-mails would go
14:08 25 out. 8,000 to 15,000 e-mails. Those are individual acts.

Rebuttal Argument by Mr. Zummo

1 If you read this charge on that issue, the thing that's a
2 violation is to distribute copies with the removed copyright
3 notices and management information.

4 Does it make any sense that the law would say
14:09 5 it's a violation to distribute, but one distribution because
6 you hit a "send" button on e-mail is the same as 15,000?
7 There's a huge difference between distributing 15,000 and
8 distributing 8,000 or distributing one.

9 And one thing that -- I was very interested
14:09 10 that Mr. Strother wanted to talk about feathers on the
11 burden of proof. Because, you know, I was ten years old
12 once, too. I went to a very traditional catholic school.

13 THE COURT: You have two minutes left.

14 MR. ZUMMO: And I remember the subject whether it's
14:09 15 right or wrong to gossip was taught. And the teacher that
16 we had told a story about somebody that went to confession
17 and said, 'I have been gossiping.' And the priest said,
18 'Well, I am going to give you a two-part penance. First, I
19 want you to go and take a feather pillow to the top of the
14:10 20 tallest hill in town and rip it open and then come back.'

21 And, so, the person did, ripped it, the
22 feathers start blowing in the wind and he came back.

23 And the priest said, 'Now for the second part
24 of your penance I want you to go get all those feathers.'

14:10 25 This problem of the distribution of our plans

Rebuttal Argument by Mr. Zummo

1 is like those feathers in the wind. We can't go get those
2 feathers. Mr. Ramani and Mr. Cameron can't go get those
3 feathers. Nobody knows, after they have sent our plans out
4 to all of these people, what's happening with them.

14:10 5 All we can do is what the law permits us to
6 do. That's to come here and submit these questions and
7 submit these issues to the eight of you, and whatever the
8 law says happens, whether it's recovery of profits or these
9 violations, that's what we are allowed to do. That's the
14:11 10 best we can do to try to rectify this.

11 Sam and Preston have a life invested in not
12 these five plans but in the whole library of plans, and the
13 only way to keep that investment, to preserve what they have
14 spent their life -- their married lives, their business
14:11 15 lives together, is for you to answer these questions
16 honestly and enforce the law.

17 Thank you.

18 THE COURT: Now, ladies and gentlemen, in a minute
19 or two I will give the jury charge to Ellen to escort you
14:11 20 into the jury room.

21 You now set your own schedule. Take whatever
22 breaks you want or whatever, but I do have some parameters
23 that I've used before I got to this court. I've used it in
24 state court, being downtown and the hours of the day.

14:12 25 You may deliberate each day up to 6:00 p.m.,

1 but the attorneys and I will be excused, meaning we'll be
2 out of here, at about 5:00. So, you can go later.

3 So, if you reach a verdict between 5:00 and
4 6:00 there is a procedure, like the last trial we had. You
14:12 5 seal it up, come back the next day, unseal it.

6 And then I come back and visit with you, and I
7 visit with you -- usually, it averages an hour, or whatever
8 amount of time you want to take, and we can talk about this
9 or anything else that you may have about the federal court
14:12 10 system.

11 Now, as far as getting here tomorrow, you can
12 get here -- if you hold over until tomorrow, you can get
13 here as early as 9:00 but not later than 10:00. We have got
14 other things going on, but, you know, the jury has got a
14:12 15 priority and we'll fit you in and give everybody plenty of
16 notice.

17 Again, you may deliberate until 6:00 each day,
18 but not later than 5:00. If you have any question or a
19 verdict we'll take it the next morning when we come back in.

14:13 20 I hope -- Do we have some snacks back there
21 for them or not?

22 CASE MANAGER: Cookies.

23 THE COURT: Cookies. Well, that's better than what
24 they get for the judge and the attorneys.

14:13 25 In any event, thank you so much for your

1 attention. It was a short case. It was well tried. It had
2 a complicated legal theory. Hopefully, and I found out
3 doing this for all these years, you learn something about
4 somebody else's business and then it comes to a lay jury, in
14:13 5 effect, a cross-section of the community, to put it all
6 together as best you can with these instructions and then to
7 render a verdict. In a criminal case it's either guilt or
8 innocence, and in a civil case it's answering the questions
9 and filling in the blanks.

14:14 10 Ellen, is there anything else I have missed?

11 CASE MANAGER: I don't think so.

12 THE COURT: Okay. We will go through the exhibits
13 and they will be in to you in a few minutes. The lawyers
14 are going to go and make sure everything that's in should be
14:14 15 in, but you can immediately start your deliberations.

16 If you take a break during your deliberations,
17 which you may, if anybody leaves the room -- you can't
18 discuss the case unless all eight of you are in there. And
19 you set your own time for breaks and coming and going.

14:14 20 Again, you can get here as early as 9:00 but
21 not later than 10:00, and you know about the end of day.

22 As I say, you heard it on TV. It's true.
23 Ladies and gentlemen, please stand and commence your
24 deliberations.

14:15 25 (Jury not present)

1 THE COURT: You can be seated. I want to just give
2 you some information.

3 You don't have to stay at the courthouse or in
4 the courtroom for sure, if you want to go down to the
14:15 5 cafeteria or anywhere else, the library or whatever. Make
6 sure, though, you have your cell phones with you. If we get
7 a question or a verdict you need to be back here -- at least
8 one attorney for each side -- you need to be back here
9 within ten minutes. If you're not here in ten minutes I am
14:15 10 going to take the question.

11 It's now 2:14. We'll let everybody be free,
12 let's say, until 3:15 and let them start working.

13 So, in effect, it's now about 2:15. The
14 earliest that we'll contact you with a question would be
14:15 15 3:05 and have you back here at 3:15. In other words, so you
16 need to be ready to get back here at the earliest -- that
17 will give you some time to take a break or if you didn't
18 grab a bite or whatever. But as of 3:05 you will be on ten
19 minutes' call. So, at least, we'll give you some freedom
14:16 20 and let the jury do what they need to do and get organized.

21 You need to get all the exhibits together.
22 Once you have that done, just send it back in. If you
23 really have a disagreement on what's going back in, I'll be
24 in there, certainly, for the foreseeable future. We have
14:16 25 got work to do at the desk, as I am sure you do.

1 Any other questions?

2 MR. ZUMMO: Your Honor, I have to be in Dallas
3 tomorrow morning and, so, I was going --

4 THE COURT: Oh. Bonham is going to --

14:16 5 MR. ZUMMO: I am going to have to leave this in
6 Mr. Bonham's hands. So, I would ask that I can be excused.

7 THE COURT: Absolutely.

8 MR. ZUMMO: Thank you, Judge.

9 THE COURT: Anything else you want to talk about?

14:16 10 MR. STROTHER: Just to clarify, are the parties
11 excused without --

12 THE COURT: The parties are excused.

13 MR. STROTHER: Thank you.

14 THE COURT: You may want them here if any questions
14:17 15 come in. You may not. Some people say -- I usually don't
16 bring the jury back in unless there is a verdict. Okay?
17 Occasionally, on rare occasions, do I bring them back in.

18 But, no, as far as you're concerned it's up to
19 you. You can excuse your clients or you can have them
14:17 20 remain here if you think it looks better, if the jury comes
21 back, if I have to give them an instruction in here. I
22 don't require that at that point.

23 That's a good question.

24 Anything else?

14:17 25 MR. ZUMMO: Not from us, Your Honor.

1 THE COURT: All right. Then, if you would, get
2 together on the exhibits. Given them to Ellen. If there is
3 a problem just come get me.

4 All right. We'll stand adjourned.

5
6 COURT REPORTER'S CERTIFICATE

7 I, BRUCE SLAVIN, certify that the foregoing is a
8 correct transcript from the record of proceedings in the
9 above-entitled matter, to the best of my ability.

10

11

12

s/Bruce Slavin
BRUCE SLAVIN, RPR, CMR

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